Criminal Appeal (D.B) No.685 of 2006
with
Criminal Appeal (D.B) No.451 of 2006
with
Criminal Appeal (D.B) No.476 of 2006
with
Criminal Appeal (D.B) No.503 of 2006

Against the judgment of conviction dated 28.3.2006 and order of sentence dated 29.3.2006 passed by the Sessions Judge,Sahibganj in S.C.No.120 2003.

Mukesh Mandal,son of Prabhu Mandal, resident of Village-Chanan, P.S.Girwabari (Borio),Dist Sahibganj.....Appellant [Cr.App.(D.B) No.685 of 2006]

1. Ajay Mandal son of Dinanath Mandal
2.Dhoria @ Sanjay Mandal son of Dinanath Mandal
3. Niranjan Mandal son of Suresh Mandal
4. Dharmraj Mandal
@ Compound Mandal son of Doman Mandal
All are resident of Bara Zirwabari Chanan, P.S.Borio (J), Dist- Sahibganj.....Appellants [Cr.App.(D.B) No.451 of 2006]

Mahesh Mandal son of Tarachand Mandl, resident of village Chanan, P.S.Girwabari (Borio), Dist- Sahibganj.....Appellant [Cr.App.(D.B) No.476 of 2006]

1. Sures Mandal son of late Anup Lal Mandal
2. Dina Nath Mandal son of late Anup Lal Mandal
3. Bhokari Mandal son of late Suokhi Mandal
4. Sanjay Mandal son of Bhokari Mandal
5. Surya Mandal son of late Chedi Mandal
6. Bishwanath Mandal son of late Feku Mandal
7. Jotish Mandal son of late Feku Mandal
8. Babua Mandal son of Ghanshyam Mandal
9. Santosh Mandal @ Santosh Kumar Mandal son of Prabhu Mandal
10.Budhu Mandal@ Budh Narayan Mandal, son of Dina Mandal
All are resident of village- Bara Jirwabari, Chanan, P.S. Borio (J), Dist-Sahibganj.....Appellants[Cr.App(D.B) No.503/06]

-VERSUS-

The State of Jharkhand.....Respondent (in all the cases)

For the Appellants: M/s.Jitendra S. Singh, Ashish Kumar Thakur, Anurag Kashyap & S.N.Pd.Roy, Advocate
For the State : M/s. S.S.Chouchary, V.S.Sahay & Lilly Sahay, A.P.P

P R E S E N T
THE HON'BLE MR.JUSTICE R. R. PRASAD
THE HON'BLE MR.JUSTICE RAVI NATH VERMA

By Court: All the four appeals were heard together and are being disposed of by this common judgment as all arising out of the same judgment of conviction dated 28.3.2006 and order of sentence dated 29.3.2006 passed by the Sessions Judge, Sahibganj in Sessions Case No.120 of 2003 whereby and whereunder the court having found the appellants Mukesh Mandal and

Mahesh Mandal guilty for committing murder of Ganeshi Mandal convicted them for the offences punishable under Section 302 of the Indian Penal Code whereas all other appellants were convicted for the offence punishable under Sections 302/149 for causing murder of said Ganeshi Mandal. At the same time, all the appellants were found guilty for the offence punishable under Section 201 of the Indian Penal Code and thereby all the appellants were sentenced to undergo rigorous imprisonment for life and further to undergo rigorous imprisonment for seven years for the offence punishable under Section 201 of the Indian Penal Code. Both the sentences were ordered to run concurrently.

2. The case of the prosecution as has been made out in the Fardbeyan (Ext.1) is that while the informant Pramila Devi (P.W.1) was in her house on 23.5.2002 along with her two sons Shambhu Mandal (P.W.2) and Brahma Kumar Mandal (P.W.3) as well as her daughter Ramni Kumari (P.W.4), her husband, Ganeshi Mandal came from Bhagalpur at about 8 p.m. He told her that he would be surrendering in the court tomorrow in connection with a case of murder in which he has been made accused. Meanwhile, all the appellants as well as other persons named in the first information report came variously armed and surrounded the house and were exhorting each other to kill her husband Ganeshi Mandal as he had killed Dr.Mandal @ Dharmbir Mandal.They entered into the house. Of them appellants Mukesh Mandal as well as Mahesh Mandal fired shots at her husband causing injuries over the head and face, as a result of which, he fell down and thereafter other accused persons started assaulting him with kicks and danda. Ganeshi Mandal died at the spot. Thereupon they took out the dead body and started taking it away. Meanwhile, when his son Shambhu Mandal (P.W.2) tried to stop them from taking the dead body, accused Kesho Mandal caught hold of him up by his neck and started taking him away also towards the river Ganges. When mother-in-law of the informant and daughter Ramni Kumar (P.W.4) raised alarm, several persons assembled over there but they did not do anything out of fear.

2. After two hours, the Investigating Officer Rabindra Kumar Singh (P.W.5) of Borio (Jirwabari O.P) Police Station on receiving rumor that someone has been killed at village Chanan, when he came over there he recorded the fardbeyan of Pramila Devi (P.W.1), on the basis of which a formal FIR (Ext.2) was drawn. The matter was taken up for investigation. During investigation, the Investigating Officer (P.W.5) found the house of one Kalachand Mandal situated adjacent to the house of the informant as the place of occurrence and not the house of the informant. During inspection of the place of occurrence, he did find the mark of wiping off the floor of room and courtyard of the house of said Kalachand Mandal. The Investigating Officer recorded further statement of the informant and also the statements of her sons and daughter. Surprisingly the Investigating Officer does not seems to have recorded the statement of the inmates of the house of Kalachand Mandal where, as per the witnesses P.Ws. 2, 3 and 4, the occurrence had taken place. However, after recording the statements of the witnesses as aforesaid, charge sheet was submitted against 17 persons including these appellants, upon which cognizance of the offences was taken and when the case was committed to the court of sessions, they were put on trial. During trial, one of the accused person, namely, Kesho Mandal died.

3. The prosecution in order to prove its case examined altogether five witnesses. Of them P.W.1 Pramila Devi is the informant, who has testified in the same manner as she had made statement in her fardbeyan. However, the testimonies of other witnesses, namely, Shambhu Mandal, P.W.2 Brahma Mandal, P.W.3 and Ramni Kumari, P.W.4 are somewhat different so far it relates to the place of occurrence. All those three witnesses did testify that while they along with their mother were in the house, their father Ganeshi Mandal reached there at about 8.p.m. Soon thereafter all the accused persons came and when found the deceased there, they hurled abuses at him. Thereupon Ganeshi Mandal ran away from there and came to the house of Kalachand Mandal situated adjacent to their house. The accused persons also came there by chasing their father. There they (witnesses) also reached and saw Mahesh Mandal and Mukesh Mandal firing shots upon their father

causing injuries over face and temporal region. At the same time, Kesho Mandal also fired shot. On receiving gun shot injury, father fell down and then accused persons brought him to the courtyard by dragging and thereafter when the accused persons started taking the dead body, Shambhu Mandal (P.W.2) tried to stop them from taking the dead body. Upon it the accused Kesho Mandal caught hold of him by his neck and started taking him away but in the way, he having came out of their clutches fled from there. The witnesses have also deposed that the accused persons took the dead body near river Ganges and cut the dead body into pieces and threw it in the river.

4. It is worthwhile to state here that the Investigating Officer (P.W.5) did not find the house of the informant as the place of occurrence as has been claimed by P.W.1, rather found the house of Kalachand Mandal as the place of occurrence where the Investigating Officer during inspection found some evidence of floor being wiped off. However, he collected earth smeared with blood from in front of the house of Kalachand Mandal. He did also find trail of blood from the house leading to river the Ganges but he never collected earth smeared with blood from any of the trail of blood.

5. After conclusion of the prosecution case, incriminating evidences appearing against the appellants were put to them under Section 313 of the Code of Criminal Procedure which the appellants denied.

6. Thereafter eight witnesses were examined on behalf of the defence. Of them Most. Batorni, D.W.1 and Bisekha Devi, D.W.2 are the inmates of the house of Kalachand Mandal where the deceased is said to have been done to death. They categorically did depose that no occurrence had taken place in their house whereas D.W.3, D.W.4, D.W.5, D.W.6, D.W.7 and D.W.8 have simply deposed that since last four years, they have not seen Ganeshi Mandal in the village. However, D.W.5 has gone to say to the extent that he has come to know that Ganeshi Mandal and his son Shambhu Mandal had been seen by someone at Delhi. The defence by adducing those witnesses tried to make out a case that since Ganeshi Mandal and his son Shambhu Mandal were accused in a case of murder, they had left the village and have been residing

elsewhere and therefore, a case was concocted with a view that Ganeshi Mandal may not be put on trial.

7. However, the trial court without giving any specific finding over place of occurrence did find the witnesses to be trustworthy and recorded the order of conviction and sentence as aforesaid which is under challenge.

8. Mr. Jitendra S. Singh, learned counsel appearing for the appellants submits that P.W.1 does speak about the place of occurrence as that of her house whereas her sons and daughter P.Ws.2, 3 and 4 speak about the place of occurrence as that of the house of Kalachand Mandal which is adjacent to the house of the informant and thereby unless and until place of occurrence is established by the prosecution, the prosecution cannot be said to have proved its case beyond all reasonable doubts.

9. In this regard, it was highlighted that as per the evidence of the informant (P.W.1), while she was in her house along with her sons and daughter, the accused persons came and finding Ganeshi Mandal there they entered into a room where two of them are said to have fired shot upon him but the evidences of P.Ws 2, 3 and 4 are otherwise where they all have said that when the accused persons came to their house, they having found their father (deceased) there they abused him upon which the deceased ran away from there and came to the house of Kalachand Mandal and entered into a room where the accused persons also entered and some of them fired shot, as a result of which, he died and thereby it is evident that the prosecution itself has come with two places of occurrence which, in any view of the matter, cannot be and under this circumstances, the prosecution case becomes quite doubtful.

10. Further, it was submitted that if the house of Kalachand Mandal is the place of occurrence, then the informant, P.W.1 may not be an eye witness. At the same time, P.Ws, 2, 3 and 4 also do not seem to have come to the house of Kalachand Mandal when the appellants came to the house of Kalachand Mandal by chasing the deceased as they finding the number of accused persons must be terrorized and would not have dared to come to the house of Kalachand Mandal, which in all probability happened like that

which is evident from the fact that P.W.3 before the police had stated that he had heard sound of two firing which does suggest that P.W.3 or even other witnesses may not be present at the house of Kalachand Mandal.

11. Further it was submitted that testimony of P.W.1 is not inconsistent with the testimonies of other three witnesses as P.W.1 has testified that Mukesh Mandal when fired shot it hit over the face of the deceased and when Kesho Mandal fired shot it hit over the temporal region whereas other witnesses have stated that Mukesh Mandal when fired shot it hit over the face and Mahesh Mandal when fired shot it hit at temporal region and apart from them, Kesho Mandal also fired shot and this inconsistency may be due to reason that they had actually not seen the occurrence.

12. Thus, it was submitted that when the place of occurrence has not been established by the prosecution and testimonies are not consistent with each other, the appellants deserves tobe acquitted.

13. As against this, learned counsel appearing for the State submitted that it is true that the place of occurrence as stated by the P.W.1 is different from the place of occurrence as stated by P.Ws.2, 3 and 4 but on that count, the prosecution case cannot be thrown as P.Ws. 2, 3 and 4 are consistent to each other which gets corroboration from the objection finding of the Investigating Officer who did find presence of mark of floor being washed off at the house of Kalachand Mandal and thereby under the circumstances, the prosecution case is worth acceptable and therefore, the trial court did not commit any illegality in recording the judgment of conviction and order of sentence against the appellants.

14. Having heard learned counsel appearing for the parties and on perusal of the record, we do find that the place of occurrence as stated by P.W.1 is different than the place of occurrence stated by P.Ws.2, 3 and 4. It may be reiterated that according to P.W.1, while she was in her house along with sons and daughter P.Ws.2, 3 and 4, her husband came from Bhagalpur at about 8 p.m. After a while, number of accused persons came, surrounded the house and then entered into the house by saying killer of Dr.Mandal @ Dharmbir Mandal has come, finish him off. By saying this, they entered into the house

and killed the deceased inside the room but the evidences of P.Ws.2, 3 and 4 are different so far it relates to the place of occurrence wherein they all have deposed that when the accused persons came to their house, their father ran away from there and then came to the house of Kalachand Mandal and hided himself in a room where the accused persons entered and committed murder. Thus, it is evident that the prosecution itself has come with two places of occurrence which in the facts and circumstances cannot be, either it would be at the house of the informant or at the house of Kalachand Mandal. However, according to the State, the place of occurrence is the house of Kalachand Mandal as the Investigating Officer did find some evidence of washing off the floor of the room where the deceased was done to death.

15. It is true that the Investigating Officer in its objective finding has found some evidence of washing off the floor of the room of Kalachand Mandal and has also claimed to have collected earth smeared with blood from infront fo the house and has also noted to have seen the trail of blood from the house of Kalachand Mandal till river the Ganges but he never seems to have cared to collect those earth smeared with blood and to send it for its chemical examination before the forensic science laboratory. When earth smeared with blood seized is not sent for its chemical examination, the case of the prosecution is hardly disbelieved on that count. But here the situation on account of two places of occurrence being there as per the prosecution version itself become quite different and also for the reason that the Investigating Officer to over utter surprise did not record the statements of inmates of the house of Kalachand Mandal where the occurrence is said to have taken place, nor any explanation seems to have been given by the Investigating Officer for not recording the statement of the inmates of the house of Kalachand Mandal.

16. On the other hand, two of the defence witnesses out of eight, Most. Batorni (D.W.1) widow of Kalachand Mandal and other Besekha Devi (D.W.2) daughter of Kalachand Mandal have stated that no such occurrence had taken place in their house. Had their statements been taken by the prosecution in view of the statement made by the witnesses no.2, 3 and 4 and also in view of

the objecting finding of the Investigating Officer and would have supported the version of the witnesses, the matter would have been different even they would have stated in the court that no such occurrence had taken place in their house. Here, they have categorically stated that no occurrence had taken place in their house. Nothing is there in the cross-examination to discredit such statement made by the witnesses in their examination-in-chief. Furthermore, we are at loss as to who tried to remove the evidence of murder from the place of occurrence certainly not the accused persons as it is never the case of the prosecution.

17. Under the circumstances as stated above, we do find that the trial court committed illegality in recording the judgment of conviction and order of sentence when the prosecution has utterly failed to establish its case beyond all reasonable doubt. Accordingly, the judgment of conviction and order of sentence passed against the appellants by the Sessions Judge, Sahibganj in sessions case no.120 of 2003 is hereby set aside. Consequently, the appellants are acquitted of the charges. Accordingly, the appellant Mukesh Mandal (in Cr.App.No.685 of 2006) and the appellant Mahesh Mandal (in Cr.App.No.476 of 2006), who are in custody, are directed to be released forthwith, if not required in connection with any other case.

18. So far other appellants (in Cr. App.No.451 of 2006 and Cr. App.No.503 of 2006) are concerned, they are discharged from the liabilities of their bail bonds.

19. Thus, these appeals stand allowed.

(R. R. Prasad, J.)

(Ravi Nath Verma, J.)

Jharkhand High Court, Ranchi,
Dated the 25th February, 2015,
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